**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION.**

**CRIMINAL REVISION APPLICATION No.162 of 2007**

Manjiri Madhukar Deshmukh ..Applicant.

Vs.

M/s Omega Information Systems & Ors Respondents.

Mr A. M. Kulkarni, Advocate for the Applicant.

Mr S. S. Patwardhan, Advocate for the Respondent No.1.

Ms S. D. Shinde APP for the RespondentNo.2 -State.

**CORAM: V.C. DAGA,J.**

**DATED: 10th December, 2007.**

**P.C.:-**

1. Heard learned counsel appearing for the applicant-accused, learned counsel for the respondent No.2-original complainant and learned APP for the respondent- State of Maharashtra.

2. Perused revision petition with documents annexed thereto.

3. The applicant has invoked revisional jurisdiction of this Court to challenge the order dated 5.2.2007 passed in Criminal

Revision Application No. 172 of 2005 by the Principal Sessions Judge,Sangli, ("the first Appellate Court" for short); whereby the said revision is allowed, confirming the order of conviction against the accused-applicant for the offence punishable under Section 138 of the Negotible Instruments Act and remanding matter back to the Trial Court to hear the parties afresh and to pass appropriate order of sentence.

4. The learned counsel appearing for the applicant tried to contend that the impugned order is erroneous and based on erroneous consideration that the cheque was given by the applicant in discharge of its enforceable debt. He further submits that the impugned order, passed by the Court below to the extent it imposes fine, is legal and valid and needs no interference.

5. Having heard the rival parties, no fault can be found with the impugned order. The learned Judicial Magistrate, First Class, Miraj; while convicting the applicant-accused under Section 255 (2) of the Cr.P.C. for the offence under Section 138 of the Negotiable

Instruments Act,( for short "the N.I.Act") has imposed fine of Rs.2000/- in default to suffer S.I. for one month. But it has ignored the mandate of Section 138 of the Negotiable Instruments Act; wherein, the fine could be double the amount of cheque and out of that fine the amount of compensation is required to be paid. This legal position appears to have been escaped attention of the learned Magistrate. The learned Magistrate also appears to have ignored the mandate of Sections 80, 81 and 113 of the N.I. Act which provide for payment of interest which could be the basis for calculating the amount of compensation to be awarded as fine. In this view of the matter, no fault can be found with the impugned order passed by the Sessions Court. However, trial Court is expected to determine the amount of compensation and award it as fine with further direction to pay compensation out of that amount of fine. The learned Magistrate is directed to dispose of complaint being S.C.C. No. 2645 of 2001 as expeditiously as possible, at any rate, within four months from the date of receipt of copy of this order.

6. In the above view of the matter, no case is made out to interfere with the impugned order. In the result, the revision application has no merit. Same is accordingly dismissed with no order as to costs.

7. Interim relief granted vide order dated 17.4.2007 to continue further for a period of for four weeks.

**(V.C.DAGA,J)**